

CALIFORNIA COASTAL COMMISSION

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August 7, 2003

The Honorable Don Evans
Secretary
United States Department of Commerce
Fourteenth and Constitution Avenues, N.W.
Washington, D.C. 20230

Re: June 11, 2003, Federal Register Notice, Procedural Changes to the Federal Consistency Process 15 CFR Part 930, Office of Ocean and Coastal Resource Management (OCRM), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (Commerce)

Dear Secretary Evans:

On behalf of the California Coastal Commission (CCC) and the San Francisco Bay Conservation and Development Commission (BCDC), we wish to convey our strong opposition to the referenced rule changes because they would break the compact Congress and past administrations made with coastal states pursuant to the federal Coastal Zone Management Act (CZMA) and its implementing regulations.

We strongly oppose the proposed regulations because they are unnecessary. Nothing is broken that needs fixing. These changes clearly and significantly weaken the ability of states to safeguard coastal communities against environmental degradation stemming from energy industry activities, federally permitted development, and federal agency activities. The new rules are euphemistically termed "improvements," when in fact they constitute a full frontal attack on states' rights and are a transparent effort to make it easier for the oil industry to drill off the California coast.

The landmark CZMA of 1972 is the only land-use planning and management law at the national level. It represents a unique and carefully crafted compact between coastal states and the federal government. Through this partnership, the CZMA, for the first time, also gave local government a meaningful voice in federal actions and development decisions that affect the environmental quality of local communities. The CZMA has worked remarkably well for thirty years and has protected coastal resources around the country for the benefit of current and future generations. It protects environmental quality and integrity of natural and human communities while accommodating environmentally sustainable economic development.

The CZMA's federal consistency review provisions, even more important than federal program funding, empower coastal states with authority to review private development (e.g., offshore oil drilling) needing federal approval and federal activities affecting coastal resources and have been critical to the proven success of the national coastal management program. The proposed rule, if enacted, will do irreparable harm to this federal-state partnership and contravene Congressional intent in enacting and amending the CZMA by stripping states of vital authority they have effectively implemented for three decades.

The proposed rule upends the balance of power intended by Congress between federal and state agencies making it easier for the oil and gas industry and federal agencies to circumvent and ignore legitimate environmental concerns raised by states and local government. Contrary to baseless assertions that the new rules will "streamline" the process, they will only complicate decision-making and will foster increased conflict. Rather than avoid litigation, the proposed rules invite it and will increase public costs in carrying out coastal protection under the CZMA.

The proposed regulations substantially restrict the definition of federal activities requiring state review in a thinly veiled attempt to reverse a recent 9th Circuit Court of Appeal decision rejecting DOI and oil industry arguments to narrowly define activities subject to consistency review. Another change strips states of the ability to determine whether previously reviewed federally licensed or permitted activities have substantially changed warranting a new consistency review. Under the new rule, OCRM shifts this power to the federal agency, which will promote litigation. Another change shifts power from the states to the Minerals Management Service in DOI to determine whether an applicant has substantially complied with an OCS development plan and whether it must submit an amended plan to the state for its review. This abdication of responsibility by NOAA assigns the fox to guard the hen house. The proposed rule also arbitrarily cuts off information requirements and input irrespective of the relevance and importance of that information to informed decision-making by states conducting their consistency review.

We have repeatedly requested and have not received answers grounded on sound public policy reasons explaining the need for these new rules. Why is the Administration forcing coastal states to defend against rule changes that significantly weaken coastal protection around the country? What we do know is that oil companies and DOI, acting on behalf of industry, have aggressively pushed for changes that short-circuit procedures with a track record of environmental protection and that strip states of an effective say over activities that can have significant adverse effects on coastal resources. We can only conclude that narrow special interests are driving the new rules making it easier to develop America's coasts.

In conclusion, the existing regulations do not need to be changed. The combined effect of the proposed rule changes is to usurp state's rights established by Congress, NOAA's own regulations, and three decades of practice. They will add uncertainty and complexity to the federal consistency review process and will invariably generate more conflict and disagreements between state and federal agencies. The result will be increased litigation at great cost to the public. The existing federal-state partnership works well, and effectively serves the public's best interests fully consistent with the intent of Congress.

For these reasons, we respectfully ask that you withdraw the proposed rule changes. We reiterate our strongly held position that there is no sound public policy reason to proceed with the proposed regulation changes.

Thank you for the opportunity to comment on the advanced notice of proposed rulemaking. Enclosed with this letter are additional and more specific comments on the proposed rule changes. Please feel free to contact the Executive Directors of our agencies, Peter Douglas (415-904-5201) and Will Travis (415-352-3653), if you have any questions concerning this matter.

Sincerely,

MIKE REILLY
Chair
California Coastal Commission

BARBARA KAUFMAN
Chair
San Francisco Bay Conservation and
Development Commission

Attachment

cc: The Honorable Gray Davis, Governor
Coastal Commissioners
Bay Commissioners
Congressional Delegation
The Honorable Barbara Boxer
The Honorable Diane Feinstein
Coastal States Organization